

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION  
APPEALS DIVISION

HEARING  
DECISION AND RECOMMENDATION

and

Petitioner

The above-referenced matters were scheduled for hearing before Hearing Officer H. L. Cohen on [redacted] in Sacramento, California. Petitioner neither responded to the Notice of Hearing nor appeared. This Decision and Recommendation is based on material in the file.

## Protested Item

The protested liabilities for the period from October 1, 1984 through February 28, 1986 are measured by:

<u>Emergency Telephone Users Surcharge</u>	<u>Amount</u>
A. Universal Telephone Service Tax Charges Not Reported	\$539,840
B. Public Utilities Commission Fees Not Reported	<u>16,016</u>
Total	\$555,856

<u>Universal Telephone Service Tax</u>	
A. Public Utilities Commission Fees Not Reported	\$ 16,016
B. Universal Telephone Service Tax Not Reported	539,840
C. Deduction for Purchases from Disallowed	<u>366,000</u>
Total	\$921,856

#### Contentions

Petitioner contends that:

1. Public Utilities Commission (PUC) fees are not subject to either the Emergency Telephone Users Surcharge or the Universal Telephone Service Tax.

2. Amounts collected as Universal Telephone Service Tax are not subject to either the Emergency Telephone Users Surcharge or the Universal Telephone Service Tax.

3. Purchases of service from are deductible from the amount upon which the Universal Telephone Service Tax is based.

#### Summary

Petitioner was a partnership consisting of

It was engaged in providing microwave satellite communications to business and residential customers throughout the United States. Effective March 1, 1986, acquired the interests of the other two partners. There has been no prior audit.

The auditor's examination of petitioner's records revealed that petitioner had collected from its customers reimbursement for the PUC fees and reimbursement for the Universal Telephone Service Tax. The auditor regarded these amounts as receipts subject to both the surcharge and the tax. Both were regarded as reimbursement for petitioner's business expenses.

The auditor's examination of petitioner's records also revealed that petitioner had deducted payments to from the amount subject to the tax. The auditor concluded that was not a service supplier within the meaning of the Universal Telephone Service Act and thus payments to did not include the tax and were not deductible from petitioner's receipts in arriving at the amount subject to the tax.

Petitioner contends that under the law, federal, state, and local taxes are excluded from the amounts subject to the tax and to the surcharge. Since the PUC fee and the Universal Telephone Service Tax are state taxes, they are excluded from the amount subject to tax and the surcharge.

Petitioner contends that is a service supplier and that paid tax with respect to petitioner's purchases of services from. Thus, no additional tax is due from petitioner.

#### Analysis and Conclusions

Section 41020 of the Revenue and Taxation Code imposes the surcharge on amounts paid by every person in the state for intrastate communication services. Section 41021 requires every service supplier to collect the surcharge from the service user. Section 41022 provides that the surcharge shall be separately stated on the service supplier's billing to the service user. Section 41023 provides that the surcharge required to be collected constitutes a debt owed by the service supplier to the state.

The surcharge is thus a levy on the service user and is not a tax on the service supplier.

The Public Utilities Code Section 431 establishes an annual fee on telephone public utilities which provide service directly to customers. The fee is based on revenues. Section 404 of the Public Utilities Code

provides that these fees are to be allowed by the PUC as ordinary operating expenses and that the utility may separately identify the fee on billings for reimbursement to its customers.

The Public Utilities Commission fee is thus a levy on the service supplier, not on the customer. It is defined as an ordinary business expense. The fee may be separately identified on the billing but is not required to be so identified as in the surcharge.

Section 44030 of the Revenue and Taxation Code imposed the Universal Telephone Service Tax on service suppliers based on gross revenues received from intrastate telecommunication services. Gross revenues are to be taxed only to the extent that the amount has not been previously included in gross revenues subject to tax. There was nothing within the Universal Telephone Service Act requiring, prohibiting, or allowing a separate charge for reimbursement for the tax on the billings to service users. It is nevertheless a tax on the service supplier, not on the service user.

Section 44016 provides:

"'Service supplier' means any person supplying any of the following:

"(1) InterLATA intrastate telecommunications services.

"(2) IntraLATA intrastate telecommunications services if the commission, after public hearings, determines that such intraLATA intrastate telecommunications services shall be subject to the tax imposed under this part in accordance with the intent of the Legislature as set forth in Section 1 of the act enacting this section at the 1983-84 Regular Session of the Legislature.

"(3) Intrastate telecommunications services on a basis not defined by LATA boundaries."

Section 41011 excludes from "charges for services", which is the amount subject to the surcharge, taxes imposed by the United States or by any charter city. Section 44024 excludes from "gross revenues" all federal, state, and local taxes.

The above are the pertinent statutes. In the following paragraphs, they will be applied to the facts in this case.

The Public Utilities Commission fee is described in the statutes establishing it as ordinary operating expense. It is not a fee on the user, although the supplier may make a separate charge for reimbursement. The language in Section 41011 does not suggest that there is an exclusion of the fee from the amount subject to the surcharge. While the language in Section 44024 is in terms of state taxes, it is clear that this refers to taxes which a supplier is required to collect from the user. The tax here is a tax on the supplier. It would not be any more appropriate to deduct this tax from the amount subject to tax than it would be to deduct petitioner's income or property taxes from the amount subject to tax.

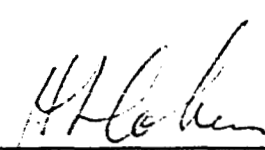
The discussion in the previous paragraph applies equally to the reimbursement for the Universal Telephone Service Tax, which petitioner bills to its customers. The tax is on petitioner. Petitioner passes this cost of doing business on to its customers but the tax is not a tax on the customers. It is immaterial that it is separately stated on billings to the customers.

Section 44030 provides that gross revenues are to be taxed only once. Thus, if petitioner purchased services subject to the tax from

would be liable for the tax. Pacific Telephone's charge to petitioner would be regarded as tax-included and the charge would be deductible from petitioner's gross revenues. is not, however, a service supplier within the meaning of Section 44016. It does not provide interLATA or interstate services. The PUC has ruled that intraLATA services are not subject to tax. Therefore, petitioner's payments to Pacific Telephone are not tax-included and cannot be deducted from petitioner's gross revenues.

Recommendation

Deny both petitions.

  
H. L. Cohen, Hearing Officer

26-17-91

6-17-91  
Date